



**MEMORANDUM**

**To: PLANNING COMMISSION**

**Date: July 11, 2006**

**From: COMMUNITY DEVELOPMENT DEPARTMENT**

**Subject: ZONING AMENDMENT, ZA-06-10: CITY OF MORGAN HILL – TEXT  
AMENDMENT TO CHAPTER 18.47, AFFORDABLE HOUSING  
BONUSES AND OTHER INCENTIVES AND CHAPTER 18.55,  
SECONDARY DWELLING UNITS**

**REQUEST**

An amendment to Title 18, Chapter 18.47 of the Morgan Hill Municipal Code, amending the Density Bonus provisions for affordable housing to be consistent with the State Density Bonus Law as set forth in Section 65915 of the California Government Code. A further amendment is also proposed under Chapter 18.55 of the Municipal Code, eliminating the Conditional Use Permit requirement and eliminating the local street standards for secondary dwelling units.

**RECOMMENDATION**

Environmental Assessment: The proposed zoning text amendments are categorically exempt under Section 15852 of the State CEQA Guidelines.

Application, ZA-06-10: Reopen Public Hearing/Adopt Resolution, with recommendation to forward to the City Council for approval.

**BACKGROUND**

As part of the adoption and certification of the updated Housing Element to the General Plan, staff is recommending amendments to the Zoning Code, Title 18, Chapter 18.47, the Affordable Housing Bonuses and Other Incentives Chapter, and Chapter 18.55, the Secondary Dwelling Units Chapter. The recommended amendments are necessary to comply with changes in the California Government Code and are also necessary to receive a State certified Housing Element.

## **CASE ANALYSIS**

### **Amendment to Chapter 18.47:**

The purpose of this chapter is to encourage the provision of affordable housing in the community by granting density bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be affordable for purchase or rent by senior citizens and lower income persons and households. This chapter was added to the Zoning Code in 1991 as required under Section 65915 of the California Government Code. Locally, developers have not used the provisions in this chapter because affordable housing is provided through the Housing Needs and Housing Types provisions in the City's Residential Development Control System (Measure C). Although not used locally, the California Government Code requires each city to include these provisions in their municipal code. The most recent amendments to Section 65915 in the Government Code were enacted under SB 1818 and went into effect in January 2005. Further amendments to this section in the Government Code are pending in the current State Legislative session. Attached is an analysis of SB 1818 that describes the changes required in Chapter 18.47 of the Municipal Code if the City were to adopt the same provisions. Also attached is Government Code Section 95915 that would be adopted by reference.

Because affordable housing in Morgan Hill is accomplished through Measure C, and given that further changes the State's density bonus provisions are pending in the state legislature, staff is recommending that we repeal the local density bonus provisions and adopt the State provisions by reference. This will allow the City's Municipal Code to remain consistent with the Government Code as currently written and as may be amended through the pending legislation and any future legislation.

### **Amendment to Chapter 18.55:**

This chapter provides for secondary dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Secondary dwellings are allowed in the O-S, Open Space, R-1 (7000), (9000), (12,000) (20,000) districts and in R-E (40,000) and (100,000) districts. In 1997, the City amended Chapter 18.55 to impose a conditional use permit requirement for secondary dwellings located in the R-1 (7000) and R-1 (9000) districts. This requirement has been pre-empted under a change in State law that requires secondary dwelling units to be a permitted use in all allowable zoning districts. Under Government Code Section 65852.150(3), "the application shall be considered ministerially, without discretionary review or hearing. . ." To comply with the Government Code, staff is recommending that Chapter 18.55 of the Zoning Code be amended to include secondary dwellings as a permitted use in the R-1 (7000) and R-1 (9000) districts.

In addition to the above amendment, staff is recommending Section 18.55.050(H) be repealed, eliminating the local street standard requirement. This section allows secondary dwellings only in areas where local streets conform to the City's public street standards. Prior to the most recent Measure C competition, the Street Standards section of the Municipal Code was amended to allow access to a residential lot from a private street or circulation aisle without compliance to the public street standard. To allow this provision to also apply to single family lots with secondary dwellings, it is recommended subsection H of Section 18.55.050 be eliminated.

### **RECOMMENDATION**

Reopen Public Hearing/Adopt Resolution, with recommendation to forward to the City Council for approval.

### **Attachments:**

1. Resolution recommending amendments to Chapter 18.47 and Chapter 18.55
2. Analysis of Senate Bill 1818 regarding Density Bonus and Incentives
3. Government Code Section 95915

**RESOLUTION NO.**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF MORGAN HILL RECOMMENDING  
APPROVAL OF AMENDMENTS TO TITLE 18, THE  
ZONING CODE UNDER CHAPTER 18.47, THE DENSITY  
BONUS AND INCENTIVES CHAPTER AND CHAPTER  
18.55, THE SECONDARY DWELLING UNIT CHAPTER TO  
COMPLY WITH THE CALIFORNIA GOVERNMENT  
CODE. APPLICATION ZA-06-10.**

**WHEREAS**, such request was considered by the Planning Commission at their regular meeting of July 11, 2006, at which time the Planning Commission recommended approval of application ZA-06-10; and

**WHEREAS**, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES  
RESOLVE AS FOLLOWS:**

**SECTION 1.** The proposed zoning text amendments are consistent with the Zoning Ordinance and the General Plan.

**SECTION 2.** The zone text changes are required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code and to comply with State Law.

**SECTION 3.** The proposed zoning text amendments are Statutory Exempt under Section 15282 of the State CEQA Guidelines.

**SECTION 4.** The Planning Commission hereby recommends approval of the zoning text amendments to Chapter 18.47 and Chapter 18.55 as outlined in the attached Exhibit A.

**PASSED AND ADOPTED THIS 11<sup>th</sup> DAY OF JULY, 2006, AT A REGULAR MEETING  
OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES:            COMMISSIONERS:**

**NOES:           COMMISSIONERS:**

**ABSTAIN:       COMMISSIONERS:**

**ABSENT: COMMISSIONERS:**

**ATTEST:**

**APPROVED:**

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**FRANCES O. SMITH, Deputy City Clerk**

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**ROBERT J. BENICH, Chair**

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## EXHIBIT A

### PART 1:

#### Chapter 18.47

#### AFFORDABLE HOUSING BONUSES AND OTHER INCENTIVES

##### Sections:

- 18.47.010 Purpose of chapter.
- 18.47.020 Density bonuses.
- 18.47.030 Definitions.
- 18.47.040 Application.
- 18.47.050 Retaining affordability.
- 18.47.060 Affordable rents.

##### **18.47.010 Purpose of chapter.**

It is the purpose of this chapter to encourage the provision of affordable housing in the community by granting bonuses and other incentives to developers of residential projects that construct or otherwise provide for housing units that will be available for purchase or rent by senior citizens and lower income persons and households. (Ord. 1009 N.S. § 2 (part), 1991)

##### **18.47.020 Density bonuses.**

A. ~~When a developer of housing agrees or proposes to construct at least (1) twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the state Health and Safety code, or (2) ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code, or (3) fifty percent of the total dwelling units of a housing development for senior citizen housing, as defined in Section 51.2 of the state Civil Code, the city shall:~~

1. ~~grant a density bonus and at least one concession or incentive unless the city makes a written finding that the additional concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the state Health and Safety Code or for rents for the targeted units to be set as specified in Section 18.47.060, or may~~

2. ~~Provide other incentives of equivalent financial value based upon the land cost per dwelling unit.~~

B. ~~If a developer agrees to construct both twenty percent of the total units for lower income households and ten percent of the total units for very low income households, the developer is entitled to one density bonus and one additional concession or incentive.~~

~~Additional bonuses, concessions and/or incentives may be granted by the planning commission upon finding that the project provides a greater percentage of units for lower income households.~~

***Residential development projects that comply with this chapter may request a density bonus. The city council, upon request, may approve an increase in the number of units permitted in a proposed residential development project provided that the increase in density is consistent with the state density bonus law as set forth in Section 65915 of the California Government Code as amended.***

€ B. Density bonuses of up to twenty-five percent may be granted for the inclusion of designated amenities as provided for under Chapter 18.18.

~~The total of affordable housing bonuses and design bonuses shall not exceed twenty-five percent.~~ (Ord. 1009 N.S. § 2 (part), 1991)

#### **18.47.030 Definitions.**

A. For the purposes of Section 18.47.020(A) ~~and (B)~~, "density bonus" means a density increase of ~~at least twenty-five~~ **to thirty five** percent over the otherwise maximum allowable residential density for the net lot area as defined in Section 18.04.250 of this chapter **and as provided in Government Code Section 95915**. ~~The density bonus shall not be included when determining the number of housing units which is equal to ten or twenty percent of the total.~~

B. For the purposes of this chapter, "concession" or "incentive" means any of the following:

1. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements which exceed the minimum building standards approved by the State Building Code Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in lot size, lot dimensions and building setbacks.

2. Other regulatory incentives or concessions **set forth in Government Code Section 95915** or proposed by the developer or the city which result in identifiable cost reductions.

C. "Housing development" as used in this chapter, means one or more groups of projects for residential units constructed in the planned unit development of the city. (Ord. 1323 N.S. § 14, 1997; Ord. 1009 N.S. § 2 (part), 1991)

#### **18.47.040 Application.**

A. The density bonus referred to in Section 18.47.020(A) shall apply to ~~housing developments consisting of five or more dwelling units. Density bonuses referred to under Section 18.47.020(C) may be applied to~~ any residential development proposal.

B. Density bonuses of up to twenty-five percent also may be granted for the inclusion of designated amenities as provided for under Chapter 18.18. (Ord. 1009 N.S. § 2 (part), 1991)

#### **18.47.050 Retaining affordability.**

A developer shall agree to and the city shall ensure continued affordability of all lower income density bonus units for thirty years or a longer period of time if required by the

construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. If the city does not grant at least one additional concession or incentive, the developer shall agree to and the city shall ensure continued affordability for a minimum of ten years of all lower income housing units receiving a density bonus. (Ord. 1009 N.S. § 2 (part), 1991)

#### **18.47.060      Affordable rents.**

Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty percent of sixty percent of the Santa Clara County median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code shall be affordable at a rent that does not exceed thirty percent of fifty percent of county median income. (Ord. 1009 N.S. § 2 (part), 1991)

### **PART 2:**

#### **Chapter 18.55**

#### **SECONDARY DWELLING UNITS**

##### **Sections:**

- 18.55.010      Purpose.
- 18.55.020      Applicability.
- ~~18.55.030      Use Permit Required~~
- ~~18.55.040      Use Permit Additional Findings~~
- 18.55.050 ~~030~~ Development standards for new secondary dwelling units.

#### **18.55.010      Purpose.**

This chapter provides for secondary dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Such secondary dwellings are allowed because they can contribute needed housing to the community's housing stock. Their inclusion on the same lot as the primary dwelling will tend to diminish their impact on the surrounding area and on services. Thus, it is found that secondary dwelling units do not exceed the allowable density for the lot upon which they are located; and further, secondary units are a residential use which is consistent with the general plan and zoning regulations. (Ord. 884 N.S. § 3 (part), 1988)

#### **18.55.020      Applicability.**

Secondary dwelling units shall only be allowed in the following zones:

- A.      O-S District: on lots of five acres (net) or more;
- B.      R-1 (7,000): on lots of seven thousand square feet or more;
- C.      R-1 (9,000): on lots of nine thousand square feet or more;



- D. R-1 (12,000): on lots of twelve thousand square feet or more;
- E. R-1 (20,000): on lots of twenty thousand square feet or more;
- F. R-E (40,000): on lots of forty thousand square feet or more;
- G. R-E (100,000): on lots of one hundred thousand square feet or more. (Ord. 1135 § 59, 1993; Ord. 908 § 1, 1989; Ord. 884 § 3 (part), 1988)

**18.55.030 — Use Permit Required.**

~~A. Secondary dwelling units shall only be permitted in the R-1 (7,000) and R-1 (9,000) districts after securing a conditional use permit pursuant to the provisions of this Chapter and Chapter 18.54 of the Morgan Hill Municipal Code. A conditional use permit shall not be required where such use is shown on a precise development plan approved under an RPD, Residential Planned Development Overlay District.~~

~~B. In the R-1 (12,000), R-1 (20,000), R-E (40,000) R-E (100,000) and O-S districts, secondary dwelling units shall be permitted uses. (Ord 1343 N.S. § 4 (part), 1997)~~

**18.55.040 — Use Permit — Additional Findings.**

~~In addition to the findings contained in Section 18.54.050 of the Morgan Hill Municipal Code, the Planning Commission must make the following findings in the affirmative before it may grant a conditional use permit for a secondary dwelling unit:~~

~~A. The proposed dwelling conforms or will conform to the provisions and requirements of this Chapter, the local adopted building and fire codes as amended, and the Zoning Ordinance as contained in Title 18 of the Morgan Hill Municipal Code.~~

~~B. The design of the secondary dwelling unit is compatible with the design and scale of the existing dwelling and the general character of the neighboring residential properties. (Ord 1343 N.S. § 4 (part), 1997)~~

**18.55.050 030 Development standards for new secondary dwelling units.**

Secondary dwelling units shall be subject to the same requirements as any dwelling located on the same parcel in the same zoning district, with the following differences:

A. Number of Secondary Dwelling Units. One secondary dwelling unit is permitted for each appropriately zoned parcel that contains single-family dwelling.

B. Minimum Lot Area per Dwelling Unit. The minimum lot area per dwelling unit required by the applicable district shall apply, except as required by the Hillside Combining District, whichever is larger.

C. Maximum Unit Size. No portion of an attached secondary dwelling unit shall occupy more than thirty percent of the existing living area of the primary dwelling.

The total floor area of an attached or detached secondary dwelling unit shall not exceed the following:

1. In the R-1 (7,000), R-1 (9,000) and R-1 (12,000) districts: six hundred forty square feet;
2. In the R-1 (20,000) districts: seven hundred fifty square feet;
3. In the R-E (40,000) district: nine hundred square feet;

4. In the R-E (100,000) and O-S districts: one thousand square feet.

D. Relationship to Primary Dwelling Unit. Secondary dwelling units may be either detached from, or attached to the primary dwelling unit on the property. A detached unit must conform to the building setback and lot coverage limitations contained in the applicable zoning district and shall be setback a minimum of six feet from the primary dwelling unit.

E. Required Off-Street Automobile Parking Spaces. There shall be provided at time of establishment of a secondary dwelling unit, a minimum of one space for a studio or one bedroom secondary unit and a minimum of two spaces for secondary dwelling unit containing two bedrooms, in addition to those required for the primary dwelling unit. Off-street parking spaces for the secondary dwelling unit may be uncovered, but shall conform to all other applicable requirements contained in Chapter 18.50. Off-street parking for a secondary dwelling may be located within the front, side or rear yard areas, provided that the parking spaces are setback a minimum of five feet from any interior lot line and fifteen feet from any side property line on the street side of a corner lot.

F. Design.

1. The design of the secondary dwelling unit shall be compatible with the design and scale of the existing dwelling (using substantially the same landscaping, color, materials and design on the exterior) and the general character of the neighboring residential properties.

G. Septic Tank Disposal System. Detached secondary dwelling units shall provide separate and independent septic tank sewage disposal systems. All leach lines shall be designed and installed in accordance with Bulletin A, "Septic Tank Sewage Disposal System," or other current septic system requirements issued by the Santa Clara County Environmental Health Services. This provision shall only apply in areas of the city where septic tank disposal systems are allowed due to lack of sanitary sewer lines. In other areas of the city, the second unit shall be connected to the sanitary sewer system through the existing lateral line serving the primary dwelling unit.

~~H. Local Street Standards. Secondary dwelling units may be allowed in all areas of the city as provided herein where local street access meets minimum city standards. Minimum city standards for public streets require the public right of way measure at least fifty feet in width, and for the curb to curb distance to measure at least forty feet in width. Secondary dwelling units may be located in areas which contain private streets, provided the private streets conform to minimum public street standards.~~

H. Maximum Number of Bedrooms. No more than two bedrooms may be constructed in a secondary dwelling unit. (Ord. 1343 N.S. §§ 5, 6 & 7, 1997; Ord. 1135 N.S. §§ 58, 60, 61, 62, 63, 64 & 65, 1993; Ord. 958 N.S. § 1, 1989; Ord. 908 N.S. §§ 6, 7, 1989; Ord. 884-A § 1, 1989; Ord. 884 § 3 (part), 1988

DENSITY BONUS

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SENATE RULES COMMITTEE	SB 1818
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	
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## UNFINISHED BUSINESS

Bill No: SB 1818  
Author: Hollingsworth (R), et al  
Amended: 8/23/04  
Vote: 21

SENATE HOUSING & COMM. DEV. COMMITTEE : 6-0, 4/19/04  
AYES: Ducheny, Hollingsworth, Alarcon, Cedillo, Dunn,  
Torlakson  
NO VOTE RECORDED: Ackerman, Florez, Vacancy

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

SENATE FLOOR : 38-0, 5/19/04  
AYES: Aanestad, Ackerman, Alarcon, Alpert, Ashburn,  
Battin, Brulte, Burton, Cedillo, Chesbro, Denham,  
Ducheny, Dunn, Escutia, Figueroa, Florez, Hollingsworth,  
Johnson, Karnette, Kuehl, Machado, Margett, McClintock,  
McPherson, Morrow, Murray, Oller, Ortiz, Perata,  
Poochigian, Romero, Scott, Sher, Soto, Speier, Torlakson,  
Vasconcellos, Vincent  
NO VOTE RECORDED: Bowen, Vacancy

ASSEMBLY FLOOR : 68-4, 8/24/04 - See last page for vote

SUBJECT : Density bonuses

SOURCE : California Association of Realtors  
California Rural Legal Assistance Foundation  
Western Center on Law and Poverty

DIGEST : This bill makes various changes in the law  
CONTINUED

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relating to the provision of affordable housing and in the density bonus law.

Assembly Amendments make numerous changes without altering the intent.

ANALYSIS : Given California's high land and construction costs for housing, it is extremely difficult for the private market to provide a product that is affordable to low and even moderate income households. Public subsidy is often required to fill the gap on affordable units. Density bonus law, however, allows public subsidies to be reduced or even eliminated by allowing a developer to include more total units in a project than would otherwise be allowed by the zoning in order to spread the cost of the affordable units over the project as a whole. The idea is to give developers regulatory incentives in place of additional subsidy for providing affordable housing.

Under existing law, cities and counties are required to grant a density bonus and at least one other specified incentive, or other housing incentives of equivalent value, to a developer who agrees to construct an affordable housing development of five or more units unless the local government makes a finding that the bonus and incentives are not needed to achieve affordability. To qualify for the benefits of this provision, a proposed housing development must contain at least 10 percent of the units affordable to very low income households, 20 percent of the units affordable to low income households, 20 percent of the units in a condominium development affordable to moderate income households, or 50 percent of the units reserved for seniors.

The density bonus must be at least 25 percent over the existing maximum density for the site, except that the density bonus for condominium projects with 20 percent of the units affordable to moderate income households is 10 percent. The additional incentive the local government must provide may include any of the following:

- 1.A reduction in site development standards.
- 2.A modification of zoning code requirements (including a

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reduction in setbacks, square footage requirements, or parking spaces, or architectural design requirements that

exceed the minimum building standards)

3. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development, and if such nonresidential uses are compatible with the project.
4. Other regulatory incentives or concessions proposed by the developer or the city or county that result in identifiable cost reductions.

A density bonus does not require, in and of itself, a general plan amendment, zoning change, or other discretionary approval.

This bill makes various changes in the law relating to the provision of affordable housing and density bonuses: Specifically, this bill:

1. Lowers the number of housing units required to be provided at below market rate in order to qualify for a density bonus as follows:
  - A. From 20 percent to 10 percent of the total units of a housing development, for lower income households.
  - B. From 10 percent to five percent of the total units of a housing development, for very low income households.
  - C. From 50 percent of the total units for seniors to any senior citizen housing development as allowed under existing law.
  - D. From 20 percent to 10 percent of the units in a condominium development, for moderate-income households.
2. Lowers the density increase from 25 percent to 20 percent for low, very low or senior housing and lowers

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to five percent for moderate income, with respect to the number of extra units that may be included over the otherwise maximum allowable residential density under the local zoning ordinance.

3. Requires that the density bonus increase incrementally according to the following:

- A. For each one percent increase above 10 percent for lower income households, the density bonus shall increase by 1.5 percent to a maximum of 35 percent.
  - B. For each one percent increase above five percent for very low income households, the density bonus shall increase by 2.5 percent to a maximum of 35 percent.
  - C. For each one percent increase above 10 percent for moderate-income households, the density bonus shall increase by one percent to a maximum of 35 percent.
4. Requires local governments to provide a developer the following number of incentives or concessions if below market rate units are included within the project:
- A. One incentive or concession if the project includes at least 10% of the total units for low-income, or five percent very low-income, or 10 percent for moderate-income households.
  - B. Two incentives or concessions if the project includes at least 20 percent of the total units for low-income, or 10 percent very low-income, or 20 percent for moderate-income households.
  - C. Three incentives or concessions if the project includes at least 30 percent of the total units for low-income, or 15 percent very low-income, or 30 percent for moderate-income households.
5. Requires that the local government ensure that the initial occupants of the moderate-income units are actually moderate income.

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6. Allows, upon sale of the unit, the seller to keep the value of any improvements, the down payment, and the seller's proportionate share of appreciation.
7. Provides that the local government shall recapture its proportionate share of appreciation, which shall be used within three years for promotion of affordable homeownership.
8. Provides a 15 percent density bonus to the developer of any market rate housing project who donates land to a local government that could accommodate housing for very

low income households equal to at least 10 percent of the number of units in the market rate development. For each one percent increase above the 10 percent the density bonus shall increase by one percent up to a maximum combined mandated density increase of 35 percent.

9. Provides that to be eligible for the bonus allowed above, all of the following conditions must be met:
- A. The applicant must donate and transfer the land no later than the approval of the final subdivision map, parcel map or development application.
  - B. The land being donated is suitable to accommodate at least 10% of the number of residential units of the proposed development.
  - C. The transferred land is at least one acre or can accommodate 40 units, has the appropriate general plan designation, is appropriately zoned for affordable housing, can be served by infrastructure, and the land has all the necessary permits and approvals.
  - D. The land is subject to deed restrictions ensuring continued affordability.
  - E. The land is donated to the local agency or to a housing developer approved by the local agency.
  - F. The transferred land shall be either within the

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boundary or \_\_ mile of the proposed development.

10. Expands the definition of "housing development" to include a subdivision, or a planned unit development, or condominium project.
11. Requires that incentives or concessions offered by the local government result in identifiable, financially sufficient, and actual cost reductions.
12. Clarifies that local governments may still grant density bonuses greater or lower than what is provided under these provisions.
13. Provides that, upon the developer's request, the local government may not require parking standards greater than the following (the developer may, however request

additional parking incentives or concessions):

- A. Zero to one bedrooms: one onsite parking space.
- B. Two to three bedrooms: two onsite parking spaces.
- C. Four or more bedrooms: two and one-half parking spaces.

#### Comments

To help address the affordable housing shortage, the Legislature enacted the density bonus law to encourage development of more low and moderate income housing units. Under existing law, a local government is required to grant a density bonus or other housing incentive or concession of equivalent value to a developer who agrees to construct housing that is affordable for persons of very low or low income, unless the city finds that the density bonus or housing incentive or concession is unnecessary for specified reasons.

According to the sponsors of this bill, density bonus law could potentially play a stronger role in meeting our state's housing needs, but the law is not as effective as it could be and needs to be strengthened.

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Nothing in this bill affects or otherwise seeks to preempt local ordinances which may require the inclusion of affordable (low, very low or moderate-income) units within a housing development.

#### Arguments in Support

Added Flexibility . According to the sponsors, California Association of Realtors, California Rural Legal Assistance Foundation and Western Center on Law and Poverty, this bill increases the flexibility and usefulness of density bonus law by both reducing the minimum percentage of targeted units needed to obtain a density bonus and by increasing the amount of density bonus that can be obtained when the percentage of targeted units is increased. Current law provides a flat 25 percent density bonus if the applicant includes 20 percent low, 10 percent very low or 50 percent senior housing in the development and a flat 10 percent density bonus if the applicant includes 20 percent moderate-income units in a condominium development. The sponsors also assert that this bill makes the density bonus more accessible by reducing those percentages to 20 percent



density bonus for 10 percent low, five percent very low or senior housing and a five percent density bonus for 10 percent moderate. The bill also expands density bonus law by incrementally increasing the amount of the density bonus, up to a maximum of 35 percent, if the applicant increases the percentage of targeted units.

Current law limits the moderate-income density bonus to condominium developments. This bill expands that to include moderate income planned unit developments. The bill, according to the sponsors, adds flexibility to the law by requiring the first occupant of such units to be moderate income rather than requiring a 10-year term of affordability by moderate-income households.

Cost Reductions . Current law requires local governments to provide applicants for density bonuses with incentives and concessions in addition to a density bonus, but the law does not quantify the value of the incentives and concessions that must be offered. This bill requires that the incentives and concessions "result in identifiable, financially sufficient and actual cost reductions."

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Incentives for Land Donation . To further expand the usefulness of density bonus law, say supporters, this bill creates a new land donation density bonus that provides an incentive for donation of land to local governments for affordable housing. Under the bill, for example, if an applicant for a 1,000 unit development donates five acres of land within that development sufficient to permit construction of 100 very low- or low-income units, the applicant would be entitled to a 15 percent density bonus, or 150 units. The land donation density bonus could be increased incrementally up to a maximum of 35 percent if the applicant increases the amount of land donated, and could be used in conjunction with the general density bonus, up to a combined maximum of 35 percent.

Arguments in Opposition

Costs . Opponents express concerns over the costs implied by this bill. They state that the bill fails to provide sufficient funding to pay up front for the costs of revising existing local density bonus ordinances.

Bonus is too High . Local governments also object to the high-density bonuses in relation to the small percentage of affordable housing. They claim that a 20 percent density bonus is too high given what is provided in affordable

units has been reduced in half from the original density bonus law requirements.

Mandated Concessions . The opponents note that the bill includes a new mandate requiring the city and county to grant one, two or three concessions, depending on the amount of affordable housing provided or risk being sued by the developer. It also removes a provision of existing law that allows a city or county to make a written finding, based on substantial evidence that the concession is not necessary. This will require, according to the opposition, local governments to give the developer whatever the developer wants.

Price Controls on Moderate-Income Housing . The local governments object to having to manage price controls on sale of moderate-income condominiums. They state that

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existing law regarding the continued affordability of the moderate-income units for 10 years should remain. It allows local agencies to choose how to maintain affordability of moderate-income units rather than specifying a method requiring a resale share.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

SUPPORT : (Verified 5/12/04) (Unable to reverify at time of writing)

California Association of Realtors (co-source)  
California Rural Legal Assistance Foundation (co-source)  
Western Center on Law and Poverty (co-source)  
Agora Group, The, Goleta  
Beacon Housing, Los Angeles  
Bet Tzedek Legal Services, Los Angeles  
Cabrillo Economic Development Corp, Saticoy  
California Affordable Housing Law Project, Oakland  
California Church IMPACT  
California Labor Federation, AFL-CIO  
California Legislative Council for Older Americans  
California Partnership, Downey  
California Reinvestment Coalition, San Francisco  
California Rural Legal Assistance Foundation,  
Center for Community Advocacy, Salinas  
Central City SRO Collaborative, San Francisco  
Chicano Consortium, Sacramento  
Civic Center Barrio Housing Corporation, Santa Ana  
Coalition for Economic Survival, Los Angeles  
Community Housing Improvement Program, Chico

Congregations Building Community, Modesto  
 Council of Churches of Santa Clara County, Cupertino  
 East Palo Alto Council of Tenants, East Palo Alto  
 Emergency Housing Consortium, San Jose  
 Enterprise Foundation, Los Angeles  
 Esperanza Community Housing Corporation, Los Angeles  
 Fair Housing Council of Riverside , Riverside  
 Father Joe's Villages, San Diego  
 First Community Housing Inc, San Jose  
 Fisher Sehgal Yanez Architects Inc, Los Angeles  
 Fresno Interdenominational Refugee Ministries, Fresno  
 Fresno West Coalition for Economic Development, Fresno

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Golden State Mobilehome Owners League, Chapter 24, East  
 Palo Alto  
 Gray Panthers California  
 Greenlining Institute, The, Oakland  
 Hillview Mental Health Center Inc, Pacoima  
 Housing Leadership Council of San Mateo County, Redwood  
 City  
 Housing Rights Committee of San Francisco, San Francisco  
 Human Rights/Fair Housing Commission of the City and County  
 of Sacramento  
 Inclusive Homes Inc, Los Angeles  
 Inquilinos Unidos, Los Angeles  
 Jericho  
 La Raza Centro Legal Inc, San Francisco  
 Loaves and Fishes, Sacramento  
 Los Angeles Housing Law Project, Los Angeles  
 Los Angeles Housing Partnership Inc, Los Angeles  
 Martha's Village and Kitchen, Indio  
 Mental Health Advocacy Services Inc, Los Angeles  
 Mid-Peninsula Housing Coalition, Redwood City  
 Neighborhood Housing Services of Orange County, Anaheim  
 New Directions Inc, Los Angeles  
 Nightingale Manor, Palm Springs  
 O.N.E. Company, Los Angeles  
 Orange County Community Housing Corporation, Santa Ana  
 Partners in Housing Inc, Ventura  
 People of Progress, Redding  
 Planning for Elders, San Francisco  
 Protection and Advocacy, Sacramento  
 Public Advocates, San Francisco  
 Public Law Center, Santa Ana  
 Rubicon Programs, Inc, Richmond  
 Rural Communities Housing Development Corp, Ukiah  
 Sacramento Neighborhood Housing Services, Sacramento  
 Saint Vincent de Paul Village, San Diego  
 San Francisco Homeless Senior Task Force, San Francisco  
 Sanders and Associates, Barbara, Oakland

Santa Cruz Affordable Housing Advocates, Santa Cruz  
 Senior Action Network, San Francisco  
 Shelter Inc of Contra Costa County, Martinez  
 Shelter Partnership Inc, Los Angeles  
 Skid Row Housing Trust , Los Angeles  
 Southern California Association of Non-Profit Housing, Los Angeles

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Southern California Housing Development Corp, Rancho Cucamonga  
 Southern California Indian Center, Inc., Fountain Valley  
 Strategic Actions for a Just Economy, Los Angeles  
 Tenderloin Housing Clinic, San Francisco  
 Valley Housing Foundation, Pacoima  
 Vietnam Veterans of California - Sacramento Veterans Resource Center, Sacramento  
 W.O.R.K.S., Los Angeles  
 West Hollywood Community Housing Corp  
 Western Center on Law and Poverty  
 WRJ Group Inc, Fountain Valley

OPPOSITION : (Verified 5/12/04)

American Planning Association  
 California State Association of Counties  
 League of California Cities

ASSEMBLY FLOOR :

AYES: Aghazarian, Bates, Benoit, Berg, Bermudez, Bogh, Calderon, Campbell, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Diaz, Dutra, Dutton, Dymally, Frommer, Garcia, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Keene, Kehoe, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Longville, Maddox, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Negrete McLeod, Oropeza, Pacheco, Parra, Plescia, Reyes, Richman, Ridley-Thomas, Runner, Salinas, Samuelian, Spitzer, Steinberg, Strickland, Vargas, Wesson, Wiggins, Wolk, Wyland, Nunez  
 NOES: Hancock, Maldonado, Nakano, Yee  
 NO VOTE RECORDED: Daucher, Firebaugh, Goldberg, Jackson, Koretz, Lowenthal, Pavley, Simitian

NC:cm 8/25/04 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*



# GOVERNMENT CODE

## SECTION 65915

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate

income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density



bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate- Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27

33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total units" or "total dwelling units" does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22

18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except

that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in

subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(l) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of

handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).